

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ERIC STEPHEN FREEZE,

Plaintiff,

v.

DONALD MCDERMOTT; ELIZABETH E.  
GALLAGHER; JOSE T. ACUNA; LISA M.  
JANICKI; ANN G. FREEZE REVOCABLE  
TRUST; RONALD L. FREEZE REVOCABLE  
TRUST; PAUL W. TAYLOR; AND THE  
COUNTY OF SKAGIT,

Defendants.

CASE NO. 2:22-cv-01844-JLR

DEFENDANTS MCDERMOTT, JANICKI  
AND SKAGIT COUNTY'S REPLY ON  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT

NOTED ON MOTION CALENDAR:

**FRIDAY MAY 12, 2023**

**SUMMARY OF REPLY**

Plaintiff Eric Freeze's Response to the County Defendants' Motion to Dismiss does not address any of the County Defendants' arguments. The County Defendants argued:

- 1) Issue preclusion bars Mr. Freeze's claims because the Superior Court adjudicated he had no interest in the Property;

2) Mr. Freeze's claims fail under his allegations; and

3) The Court should deny Plaintiff leave to amend and dismiss the case with prejudice because he cannot cure his Amended Complaint's obvious deficiencies.

The County Defendants' Motion to Dismiss is essentially unopposed, and the Court should grant it.

## ARGUMENT

Instead of addressing the County Defendants' arguments, Mr. Freeze makes some unsupported assertions that do not save his claims.

**First**, Mr. Freeze argues he satisfied the five-year statute of limitations on his claims. ECF 19, p.1:21-22. The County Defendants did not make a limitations argument, so his argument is an irrelevant non-sequitur (and depending on his claim, wrong). Likewise, his conclusion that qualified immunity does not apply (ECF 19, p.4:3-4) is a non-sequitur because the County Defendants never made a qualified immunity argument.

**Second**, Mr. Freeze’s argument that his “affidavits” establish the County Defendants have tacitly agreed to an (unpled) contract with him because the County Defendants did not deny his affidavits. He ignores that the County Defendants did not have to respond to his “affidavits” and failing to respond to them does not create a contract. *See, e.g., Bryant v. Wash. Mut. Bank*, 524 F.Supp.2d 753, 762 (W.D. Va. 2007), *aff’d*, 282 F.App’x 260 (4th Cir. 2008); *Norman v. Small*, 09CV2235 WQH NLS, 2010 WL 5173683, at \*2 (S.D. Cal. Dec. 14, 2010). But his “affidavits of truth” are irrelevant on a Motion to Dismiss because the Court presumes that the allegations are true (even if they are not) and disregards legal conclusions. *Clegg*, 18 F.3d at 754-755. Mr. Freeze’s claims fail because he simply has not stated a claim, even if the Court assumes his allegations are true.

**Third**, Mr. Freeze claims the County Defendants’ counsel, Chief Civil Deputy Prosecuting Attorney Mr. Pedersen, lacks authority to defend the County Defendants because Prosecuting Attorney Weyrich does not have a valid oath or bond. He provides no factual or legal support for

1 this proposition.<sup>1</sup> He also claims the County did not give Mr. Pedersen authorization to appear in  
 2 this case, but he is wrong. As his own filing shows, the County Commissioners authorized Mr.  
 3 Pedersen's appearance. ECF 13, p. 6-9. His final contention is that Mr. Pedersen is not a duly  
 4 appointed Deputy Prosecuting Attorney. He is again wrong. The County resolution finds Mr.  
 5 Pedersen is a Deputy Prosecuting Attorney, and recorded appointments show that he has been  
 6 since at least 2007. RJN #12-13, Ex. 12-13. Mr. Pedersen is also licensed by the Washington Bar,  
 7 as his bar number shows.

8 **Finally**, Mr. Freeze also references additional statutes (18 U.S.C. §§371, 912, 1001 *et seq.*,  
 9 42 U.S.C. §1983, and Rule of Professional Conduct 1.7(b)) but does not explain how these statutes  
 10 support his existing claims. They do not. To the extent that Mr. Freeze implies that he could  
 11 amend to state these claims, the Court should not grant leave to amend. Leave to amend "is not to  
 12 be granted automatically." *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 738  
 13 (9th Cir. 2013), *aff'd sub nom. Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015). His proposed  
 14 claims are all futile. "Futility can, by itself, justify denial of a motion for leave to amend.  
 15 [Citation.]" *Cent. Puget Sound Reg'l Transit Auth. v. Lexington Ins. Co.*, C14-778 MJP, 2014 WL  
 16 5859321, at \*1 (W.D. Wash. Nov. 12, 2014). Title 18 of the United States Code (which includes  
 17 18 U.S.C. §§371, 912, 1001 *et seq.*) generally contains criminal statutes which he cannot prosecute.  
 18 *U.S. v. Nixon*, 418 U.S. 683, 694 (1974); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).  
 19 Mr. Freeze already asserted a 42 U.S.C. §1983 which fails. And he lacks standing to assert an  
 20 RPC 1.7 violation. "The fact that a Rule is a just basis for a lawyer's self-assessment, or for  
 21 sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an  
 22 antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule."  
 23 *Chism v. Tri-State Const., Inc.*, 193 Wn.App. 818, 839 (2016) (citing RPC Scope cmt. 20).

---

24  
 25  
 26 <sup>1</sup> Mr. Freeze's assertions echo some invalid claims that several other plaintiffs made in cases before  
 27 Judges Pechman and Martinez, case numbers 23-cv-00309-MJP, 23-cv-00311-MJP, 23-cv-00312-  
 28 MJP, and 23-cv-00503-RSM. The County Defendants' motions to dismiss are pending in those  
 cases.

**CONCLUSION**


The Court should grant the County Defendants' Motion and dismiss Mr. Freeze's Complaint with prejudice and without leave to amend because he fails to show how he stated his claims.

DATED this 10<sup>th</sup> day of May, 2023.

**LCR 7(e) Length Certification**

I certify this memorandum contains 831 words, in compliance with the Local Civil Rules.

RICHARD E. WEYRICH  
SKAGIT COUNTY PROSECUTING ATTORNEY

By:  /s/ ERIK PEDERSEN, WSBA #20015  
Chief Civil Deputy  
Skagit County Prosecuting Attorney – Civil Division  
605 S Third St  
Mount Vernon, WA 98273-3867  
(360) 416-1600  
[erikp@co.skagit.wa.us](mailto:erikp@co.skagit.wa.us)

**DECLARATION OF SERVICE**

I, Chris Olson, declare as follows:

That I am over the age of 18 years and competent to be a witness herein.

On the 10<sup>th</sup> day of May 2023, as a Legal Assistant in the office of the Skagit County Prosecuting Attorney, I caused to be mailed and/or served, a true and correct copy of the:

DEFENDANTS MCDERMOTT, JANICKI AND SKAGIT COUNTY'S REPLY  
ON MOTION TO DISMISS PLAINTIFF'S COMPLAINT

to:

**Via US Mail to:**

Eric S. Freeze

**At:**

P.O. Box 12  
Concrete, WA 98227

**Via Email to:**

Eric S. Freeze

**At:**

ericfreeze87@gmail.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Mount Vernon, Washington, 10<sup>th</sup> day of May, 2023.



Chris Olson, Legal Assistant

**FRE 201 REQUEST FOR  
JUDICIAL NOTICE #12**

**Exhibit # 12**

APPOINTMENT



200701040137

Skagit County Auditor

1/4/2007 Page

1 of

1 4:26PM

STATE OF WASHINGTON

COUNTY OF SKAGIT

I, Richard A. Weyrich, holding the office of Prosecuting Attorney in and for the County of Skagit, State of Washington, do hereby appoint Erik Pedersen, as Deputy Prosecutor of said county effective January 2, 2007, to hold office until such time as this appointment shall be revoked or no longer employed with the Prosecuting Attorney.

DATED this 2 day of January, 2007.

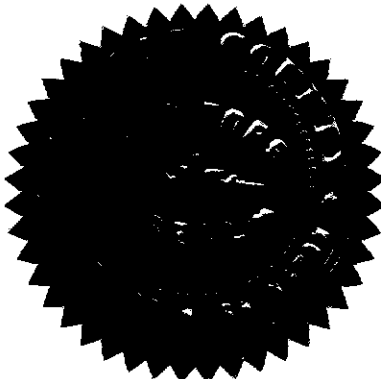
Richard A. Weyrich  
Prosecuting Attorney

.....

I, Erik Pedersen, do solemnly swear or affirm that I will support the Constitution and Laws of the United States, and the Constitution and Laws of the State of Washington, and that I will faithfully and impartially perform and discharge the duties of the office of Deputy Prosecutor, in and for the County of Skagit, State of Washington, according to the best of my ability and understanding. I further recognize that this appointment is effective until revoked or no longer employed with the Prosecuting Attorney and that I serve at the will of the Prosecuting Attorney.

Erik Pedersen

SIGNED AND SWORN to before me this 4<sup>th</sup> day of January, 2007.



Jeanne Youngquist  
Skagit County Auditor

**FRE 201 REQUEST FOR  
JUDICIAL NOTICE #13**

**Exhibit # 13**





**202301100023**

01/10/2023 08:52 AM Pages: 1 of 2 Fees: \$204.50  
Skegit County Auditor

Return Address:

Prosecuting Attorney  
605 S. Third Street  
Mount Vernon WA 98273

Document Title:

Appointment

Reference Number (if applicable): \_\_\_\_\_

Grantor(s):

☐ additional grantor names on page \_\_\_\_.

1) Richard A. Weyrich

2) \_\_\_\_\_

Grantee(s):

☐ additional grantor names on page \_\_\_\_.

1) Erik Pedersen

2) \_\_\_\_\_

Abbreviated Legal Description:

☐ full legal on page(s) \_\_\_\_.

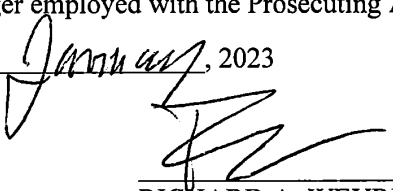
Assessor Parcel /Tax ID Number:

☐ additional parcel numbers on page \_\_\_\_.

## APPOINTMENT

I, RICHARD A. WEYRICH, holding the office of Prosecuting Attorney in and for the County of Skagit, State of Washington, do hereby appoint ERIK PEDERSEN as Deputy Prosecutor of said county effective January 1, 2023, to hold office until such time as this appointment shall be revoked or no longer employed with the Prosecuting Attorney.

DATED this 4 day of January, 2023

  
RICHARD A. WEYRICH  
Prosecuting Attorney

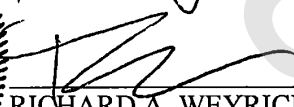
.....

I, ERIK PEDERSEN, do solemnly swear or affirm that I will support the Constitution and Laws of the United States, and the Constitution and Laws of the State of Washington and that I will faithfully and impartially perform and discharge the duties of the office of Deputy Prosecutor, in and for the County of Skagit, State of Washington, according to the best of my ability and understanding. I further recognize that this appointment is effective until revoked or no longer employed with the Prosecuting Attorney and that I serve at the will of the Prosecuting Attorney.

  
ERIK PEDERSEN

SIGNED AND SWORN before me this 4 day of January, 2023.



  
RICHARD A. WEYRICH  
Prosecuting Attorney